

# Exhibit 11

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF OHIO  
3           EASTERN DIVISION

4                   -   -   -

5  
6           IN RE:    NATIONAL                         :   HON. DAN A.  
7           PRESCRIPTION OPIATE                   :   POLSTER  
8           LITIGATION                               :     
9   :   MDL NO. 2804  
10          APPLIES TO ALL CASES                   :     
11   :   CASE NO.  
12   :   17-MD-2804  
13   :   

14                   - HIGHLY CONFIDENTIAL -  
15          SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
16                   VOLUME II

17                   -   -   -

18                   May 17, 2019

19                   -   -   -

20                   Continued videotaped  
21          deposition of DR. SETH B. WHITELOW, taken  
22          pursuant to notice, was held at the  
23          offices of Golkow Litigation Services,  
24          One Liberty Place, 1650 Market Street,  
25          Philadelphia, Pennsylvania, beginning at  
26          8:31 a.m., on the above date, before  
27          Michelle L. Gray, a Registered  
28          Professional Reporter, Certified  
29          Shorthand Reporter, Certified Realtime  
30          Reporter, and Notary Public.

31                   -   -   -

32                   GOLKOW LITIGATION SERVICES  
33                   877.370.3377 ph | 917.591.5672 fax  
34                   deps@golkow.com

1 me to work with.

2 Q. So sitting here today the  
3 answer to that question is no?

4 MR. BOGLE: You can answer  
5 that, and then we're taking a  
6 break.

7 MR. DAVISON: Yeah.

8 THE WITNESS: As I said,  
9 unless there's new available  
10 information I need to consider, I  
11 am not -- at this current point I  
12 have no intention of amending the  
13 report.

14 MR. BOGLE: All right.

15 MR. DAVISON: We can go off  
16 the record.

17 THE VIDEOGRAPHER: Going off  
18 the record at 4:19 p.m.

19 (Short break.)

20 THE VIDEOGRAPHER: Back on  
21 the record at 4:34 p.m.

22 BY MR. DAVISON:

23 Q. All right. Dr. Whitelaw, we  
24 were earlier talking about kind of the --

1 the time period for your review of  
2 Mallinckrodt's anti-diversion compliance  
3 program. Can you recall any documents  
4 that you reviewed relating to  
5 Mallinckrodt's anti-diversion compliance  
6 program from prior to 2006?

7 A. You are asking me to recall  
8 specific documents. I can't recall  
9 specific documents. But you've obviously  
10 charted it out.

11 One thing I wasn't clear,  
12 when we broke, was, I did ask for  
13 documents and did look at documents all  
14 the way through 2018. And if you look at  
15 the -- as you correctly noted, and we  
16 were correctly having that discussion  
17 right when the break took place, from  
18 2012 onward, I haven't seen enough  
19 documentation to be able to form an  
20 opinion on the adequacy of an  
21 anti-diversion program from Mallinckrodt  
22 post 2012.

23 I would need to see  
24 additional information. One of the

1 things that would be, obviously for me  
2 would be particularly critical, and  
3 something I know I asked for, there  
4 weren't any documents to be had, would  
5 have been audits.

6 Q. So, sir, I want to unpack  
7 that a little bit.

8 A. Sure.

9 Q. Are you stating today that  
10 you cannot offer an opinion as to the  
11 adequacy of Mallinckrodt's anti-diversion  
12 program post 2012?

13 A. That is what I'm saying. I  
14 do not have enough information to offer  
15 an opinion for or against.

16 Q. All right. So at trial,  
17 you're not planning to offer an opinion  
18 one way or the other regarding  
19 Mallinckrodt's anti-diversion program  
20 post 2012, correct?

21 A. Unless additional  
22 information that is relevant to this  
23 report became available and to be  
24 considered, I have no present intention

1 of doing that.

2 Q. Okay. And if additional  
3 information, you'd of course be required  
4 to write a new report and we'd do this  
5 all over again, correct?

6 MR. BOGLE: Object to form.

7 THE WITNESS: We'd certainly  
8 be doing a supplement and having a  
9 further conversation on a  
10 supplement I'm sure.

11 BY MR. DAVISON:

12 Q. But you don't intend to  
13 offer a supplement sitting here today?

14 MR. BOGLE: Object to form.

15 THE WITNESS: As I said, and  
16 I've stated on the record right  
17 now, no, I have no intention of  
18 offering a supplement as we  
19 described post 2012 on  
20 Mallinckrodt's program without any  
21 additional information.

22 BY MR. DAVISON:

23 Q. Thank you, sir.

24 So I want to -- I want to go

1 back to the beginning of the time period  
2 for your -- your review.

3 Are you offering an opinion  
4 as to the adequacy of Mallinckrodt's  
5 controlled substance compliance program  
6 from 1996 to 2006?

7 A. Again, I think we need to  
8 look at the documents, where they fall  
9 out. I'm looking at your program from  
10 just before 2007, probably up through  
11 2012 to be precise is where I had  
12 documents. Although I asked for  
13 documents going all the way back in time.

14 Q. So your report is offering  
15 an opinion as to Mallinckrodt's  
16 suspicious -- excuse me. Strike that.

17 Your report offers an  
18 opinion as to the effectiveness of  
19 Mallinckrodt's anti-diversion program  
20 from 2007 to 2012, correct?

21 MR. BOGLE: Object to form.

22 THE WITNESS: I think to be  
23 precise, it would probably be more  
24 like 2008 to 2012. That's the

1           revisit this issue, I do not have  
2           a present intention of amending my  
3           report as it stands today.

4   BY MR. DAVISON:

5           Q.     Thank you, sir.

6                     Sir, on Page 215 of your  
7   report you reference an individual named  
8   Victor Borelli. I'm looking at the third  
9   paragraph. It starts: "Mr. Borelli  
10  worked for Mallinckrodt from 2005 to  
11  2012"?

12           A.     Yes, as a matter of fact I  
13  see the reference. I do.

14           Q.     All right. And, sir, do you  
15  also recall that in your report you  
16  reference an individual from Mallinckrodt  
17  named Hugh O'Neill?

18           A.     Yes, sir. I actually do  
19  remember referencing an individual,  
20  Mr. Hugh O'Neill.

21           Q.     You are aware that  
22  Mr. O'Neill joined Mallinckrodt in 2013?

23           A.     Yes, I'm aware that  
24  Mr. O'Neill joined Mallinckrodt in 2013.



1           Q.       So you have no reason to  
2 believe that Mr. O'Neill and Mr. Borelli  
3 ever overlapped at Mallinckrodt, correct?

4           A.       That is correct. I have --  
5 have no reason to believe that they ever  
6 overlapped at Mallinckrodt.

7           Q.       Sir, if you can turn to  
8 Page 234 of your report.

9           A.       Yes, I see it.

10          Q.       You write -- I'm at the  
11 third paragraph down.

12          A.       Third paragraph down.

13          Q.       It says "When Mallinckrodt."  
14 Do you see that?

15          A.       Yes.

16          Q.       That's where it starts.

17 "When Mallinckrodt subsequently notified  
18 distributors that it would not pay  
19 chargeback on sales to multi-distributor  
20 customers, Mallinckrodt failed to report  
21 any of the orders that gave rise to  
22 multi-distributor sales to the DEA as  
23 suspicious."

24                   All right, sir. Earlier

1     today, we talked a little bit briefly  
2     about Mallinckrodt's chargeback  
3     restriction program. Are you familiar  
4     with Mallinckrodt's chargeback  
5     restriction program?

6             A.     In broad general terms, yes.  
7     But would you care to refresh my  
8     recollection of the conversation. Be  
9     happy to. It's -- it's been 14 hours,  
10    guys.

11            Q.     Fair enough.

12                    Mallinckrodt at times would  
13    restrict chargeback payments --

14            A.     Yes.

15            Q.     -- with respect to certain  
16    downstream pharmacies, do you recall  
17    that?

18            A.     Yes. Now I understand what  
19    you are referring to. Thank you for  
20    clarifying.

21            Q.     Not a problem.

22                    Did you analyze  
23    Mallinckrodt's chargeback restriction  
24    program as part of your anti-diversion

1 compliance review?

2 MR. BOGLE: Object to form.

3 THE WITNESS: I looked at --

4 I looked at how Mallinckrodt was  
5 using chargeback data and  
6 incorporating it into the SOMs  
7 program as part of my review.

8 BY MR. DAVISON:

9 Q. And did you find flaws with  
10 Mallinckrodt's chargeback restriction  
11 program?

12 MR. BOGLE: Object to form.

13 THE WITNESS: I did not find  
14 flaws with the restriction  
15 program, per se. What I found a  
16 flaw with was the presence of the  
17 fact that Mallinckrodt had access  
18 to this data for a long period of  
19 time. And it wasn't until 2010  
20 roughly that you started to use it  
21 in the SOMs program. That was the  
22 issue that I was raising with  
23 chargebacks in particular.

24 BY MR. DAVISON:

1           Q.       So -- so the flaw wasn't  
2       with what Mallinckrodt did with it, but  
3       when they started doing it. Is that  
4       fair?

5                   MR. BOGLE: Object to form.

6                   THE WITNESS: Well, some of  
7       it is a flaw of what Mallinckrodt  
8       did or didn't do with it, but the  
9       other part of the flaw is the fact  
10      that there was data that  
11      indicated, as my report indicates,  
12      and I think we can go to the page  
13      for example, on Page 235,  
14      Mallinckrodt had visibility to  
15      similar data that indicated that  
16      you were working and dealing with  
17      some pretty unsavory, shall we  
18      say, distributors, and nothing was  
19      done about it, even though you had  
20      the presence of the data inhouse  
21      until the DEA took action. So  
22      that's another issue that I have  
23      with how you used the data.

24      BY MR. DAVISON: